

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE:

B-219590

DATE: September 18, 1985

MATTER OF:

DEL-JEN, INC.

## DIGEST:

Where solicitation requires that the contract price include all applicable taxes and contracting agency furnishes information needed to compute amount of state leasehold excise tax, offeror can prepare offer including an amount for state leasehold excise tax of doubtful applicability.

DEL-JEN, INC. (DJI), protests that the uncertain applicability of the Washington State leasehold excise tax makes it impossible to prepare a price proposal under request for proposals (RFP) No. N62474-83-R-3001 issued by the Department of the Navy for base operating support, Naval Air Station, Whidbey Island, Oak Harbor, Washington.

We deny the protest.

The RFP requires that the contract price include all applicable federal, state and local taxes. DJI does not believe that the Washington State leasehold excise tax is applicable to service contracts with the federal government and is appealing the leasehold excise tax assessed by the state while it was performing a service contract for the Navy at the Naval Submarine Base, Bangor, Washington. DJI argues that the applicability and magnitude of the Washington State leasehold excise tax for the RFP are not discernible, and that the proposal due date should be delayed until Washington State rules on its appeal.

The Navy counters that the Federal Acquisition Regulation requires that RFP's include a clause that provides that the contract price include all applicable taxes and that the offeror assume the risk of whether a state tax applies. The Navy states that it has postponed the date for receipt of proposals while it attempts to obtain property value assessment information. It plans to issue an amendment with the information and provide sufficient time for offerors to use the information to take into account potential tax liability in formulating their proposals.

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In its comments on the agency report, DJI acknowledges the Navy's intent to provide tax basis information, but argues that the Navy cannot proceed with the solicitation until a determination from the state of Washington on the tax applicability is received. We do not agree.

An RFP clause requiring that the contract price include all applicable taxes constitutes notice to all offerors that offers will be evaluated on a tax-included basis and places the burden on the offeror to ascertain whether any taxes apply and to include the amount of such taxes in its price. See NASCO Products Company --Reconsideration, B-192116, Feb. 16, 1979, 79-1 C.P.D. ¶ 116. The purpose of soliciting offers on a tax-included basis is to limit the government's payment obligation to the price offered--the contractor could not claim at a later date that the government should reimburse the firm for any taxes that the firm ultimately has to pay which allegedly were not contemplated when the offer was submitted. See The Goodyear Tire & Rubber Company, B-203212, Mar. 1, 1982, 82-1 C.P.D. ¶ 172. Also this will assure that offers are evaluated on an equal "tax-included" basis. Id. Nevertheless, an offer on a "tax-excluded" basis may be considered if the cost and amount of the tax are specified elsewhere in the offer, because such information permits all offers to be evaluated on an equal basis. Trail Equipment Company, B-206975, Apr. 20, 1982, 82-1 C.P.D. ¶ 366.

Here, since the Navy is providing tax basis information needed to compute the amount of the Washington State leasehold excise tax, DJI can prepare a price proposal which takes into consideration the applicability and magnitude of the tax.

The protest is denied.

*for Seymour E. Evans*  
Harry R. Van Cleve  
General Counsel